

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	Eastern District of Virginia
Name (under which you were convicted): Mario N. Baker	Docket or Case No.: 3:08-cr-0008
Place of Confinement: FCI Gilmer	Prisoner No.: 34194-183
UNITED STATES OF AMERICA	Movant (include name under which convicted)
v. Mario Nathaniel Baker	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____
U.S. District Court -701 East Broad St, Suite 3000
Richmond, Va. 23219 (Fourth Circuit)

- (b) Criminal docket or case number (if you know): 3:08-cr-0008

2. (a) Date of the judgment of conviction (if you know): June 10, 2008

- (b) Date of sentencing: September 12, 2008

3. Length of sentence: One hundred and eighty five (185) months

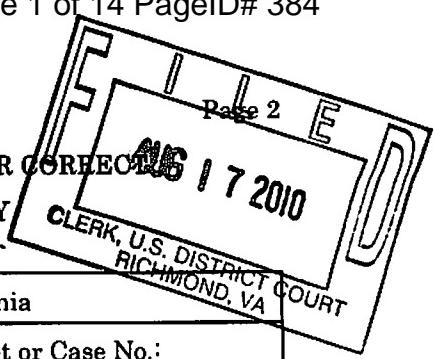
4. Nature of crime (all counts): Two counts of possession of a firearm by a convicted felon, 18 U.S.C. § 922(g)(1); one count of possession with intent to distribute heroin, 21 U.S.C. § 841; and one count of possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c).

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only



7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: U.S. Court of Appeals (Fourth Circuit)

(b) Docket or case number (if you know): 08 - 4941

(c) Result: The judgment was affirmed

(d) Date of result (if you know): August 7, 2003

(e) Citation to the case (if you know): _____

(f) Grounds raised: The District Court erred when it denied Mario N. Baker's Motion to Sever Count One of Superseding Indictment and for a separate trial on Count one; The District Court erred when it denied Mario N. Baker's Motion for Judgement of Acquittal; and the sentence imposed by the District Court was unreasonable.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): 09-8380

(2) Result: Denied

(3) Date of result (if you know): February 22, 2009

(4) Citation to the case (if you know): Arizona V. Gant

(5) Grounds raised: The search incident to arrest was illegal in light of "Arizona V. Gant".

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts and law supporting each ground.

GROUND ONE: Trial counsel was ineffective for not filing a pre-trial motion to suppress evidence.

(a) Supporting facts and law (State the specific facts and law that support your claim.):

See Memorandum

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: See Memo-
randum

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: Trial counsel was ineffective for not preserving Petitioner's constitutional rights on appeal.

(a) Supporting facts and law (State the specific facts and law that support your claim.):

See Memorandum

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: See Memorandum

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: Appellate counsel was ineffective for not supplementing intervening law "Arizona V. Gant" properly.

(a) Supporting facts and law (State the specific facts and law that support your claim.):

See Memorandum

See Memorandum

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: See Memorandum

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Rehearing Motion

Name and location of the court where the motion or petition was filed: U.S. Court of Appeals, Richmond, VA, 23219 (Fourth Circuit)

Docket or case number (if you know): 08-4941

Date of the court's decision: September 24, 2008

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: Petitioner should be granted relief under new intervening law "Arizona V. Gant.

(a) Supporting facts and law (State the specific facts and law that support your claim.):

See Memorandum

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: Barry Montgomery-901 Moorefield Dr.
Suite 200, Richmond, VA. 23236

(c) At trial: Barry Montgomery- 901 Moorefield Dr. Suite 200,
Richmond, VA. 23236

(d) At sentencing: _____

Page 12

(e) On appeal: Barry Montgomery - 901 Moorefield Dr. Suite 200
Richmond, VA. 23236

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.¹

¹ The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
 - (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
 - (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Page 14

Therefore, movant asks that the Court grant the following relief: That count(s) : (2), (4), and (6) be vacated, and on count (1), movant want a new trial or a sufficient sentence reduction,
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on August 12, 2010 (month, date, year).

Executed (signed) on August 12, 2010 (date).

Mario M. Balan

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

* * * * *



**PRIORITY
MAIL**

U.S. POSTAL SERVICE

Rate Billing Envelope

Domestic and International Use

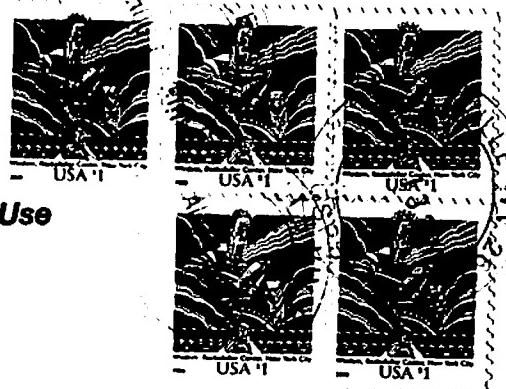
[ups.com](https://www.ups.com)

An envelope of malleable material may be enclosed, so long as the envelope is not modified, and the contents are entirely contained within the envelope with the adhesive provided as the means of closure.

INTERNATIONAL RESTRICTIONS APPLY

**4-POUND WEIGHT LIMIT ON
INTERNATIONAL APPLIES**

Custom forms are required. Consult the International Mail Manual (IMM) at pe.usps.gov or ask a retail associate for details.



Baker # 34194-183
West Virginia Correctional Institution Gilmer
P.O. Box 6000
Glenville, W.V. 26351

Proprietary:

♦34194-183↔

Clerks Office
701 E. Broad St. Ste. 3000
Richmond, VA - 23219
United States

Country of destination/Pays de destination

MARSHAL
ACT